

FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal No. 2007-65
	)	
TIMOTEO UPIA-FRIAS, JUAN	)	
GONZALEZ-ENCARNACION, and ABEL	)	
LOGAT LAGUE,	)	
	)	
Defendants.	)	
_____	)	

ATTORNEYS:

**Delia L. Smith, AUSA**  
St. Thomas, U.S.V.I.  
*For the plaintiff.*

**Jesse A. Gessin, AFD**  
St. Thomas, U.S.V.I.  
*For defendant Timoteo Upia-Frias.*

**George H. Hodge, Jr., Esq.**  
St. Thomas, U.S.V.I.  
*For defendant Juan Gonzalez-Encarnacion.*

**J. Daryl Dodson, Esq.**  
St. Thomas, U.S.V.I.  
*For defendant Abel Logat Lague.*

ORDER

**GÓMEZ, C.J.**

Before the Court are the motions of defendants Juan Gonzalez-Encarnacion ("Gonzalez-Encarnacion") and Abel Logat Lague ("Lague") to continue the trial in this matter, currently

scheduled for February 25, 2008.

Gonzalez-Encarnacion requests that the trial be continued to a date after February 26, 2008, due to his counsel's scheduling conflict. Lague also seeks a continuance. Lague requests that the trial be continued to a date after March 10, 2008, also due to his counsel's scheduling conflict.<sup>1</sup>

The Speedy Trial Act allows district courts to grant continuances on finding that "the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." See 18 U.S.C. § 3161(h)(8)(A); see also *United States v. Adedoyin*, 369 F.3d 337, 341 (3d Cir. 2004). Under the statute, courts must justify their continuances by an oral or written statement setting forth on the record their reasons for granting them. *Id.*; see also *United States v. Lattany*, 982 F.2d 866, 877 (3d Cir. 1992), *cert. denied*, 510 U.S. 829 (1993). The discretion of courts "is not unfettered, however." *United States v. Watts*, Crim. No. 2004-153, 2005 U.S. Dist. LEXIS 22505, at \*7 (D.V.I. Sept. 30, 2005). The statute lists factors that courts must consider in granting such a continuance. See, e.g., *United States v. Rivera*, 863 F.2d 293,

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<sup>1</sup> While Lague's filing is captioned as a "Response to Motion to Continue," in essence it seeks relief from the Court in the form of a continuance. The Court will thus treat Lague's filing as a motion for a continuance.

295 (3d Cir. 1988) (holding that under the totality of the circumstances, the Speedy Trial Act's requirements were met when the district court articulated on the record one of the factors listed in the statute as the reason to exclude time, such as a continuance to allow new counsel to adequately prepare for trial).

Thus, in accordance with 18 U.S.C. § 3161(h)(8)(B)(iv), the Court finds that a continuance of the trial in this matter serves the ends of justice, because proceeding immediately to trial would in essence operate to deprive the defendants of their right to counsel. Accordingly, the Court will grant a continuance and exclude the time of the continuance in conformity with the Speedy Trial Act.

For the reasons stated above, it is hereby

**ORDERED** that the motions are **GRANTED**; it is further

**ORDERED** that the trial of this matter, previously scheduled for February 25, 2008, is continued to a date to be determined.

**Dated: February 22, 2008**

S\\_\_\_\_\_  
**CURTIS V. GÓMEZ**  
**Chief Judge**

*United States v. Upia-Frias, et al.*  
Criminal No. 2007-65  
Order  
Page 4

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